

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A.B., by and through her next friend
Cassie Cordell Trueblood, et al.

Plaintiffs,

v.

Washington State Department of
Social and Health Services, et al.,

Defendants.

NO. 14-cv-01178-MJP

PARTIES' JOINT RESPONSE TO
ORDER TO SHOW CAUSE

I. INTRODUCTION

The Parties submit this response to the call for briefing contained in this Court's Order to Show Cause dated August 15, 2023, ECF 1038, and the August 16, 2023 Minute Order, ECF 1040. Because the topics contemplated for decision by the Court would merely maintain the status quo of orders that remain in effect during the pendency of an appeal and would not materially alter the status of the case on appeal, the Parties agree that the Court retains jurisdiction and discretion to issue rulings on those topics.

II. PROCEDURAL HISTORY

The Court has directed the parties to provide briefing

...on whether, notwithstanding the appeal, they believe the Court continues to have jurisdiction to: (1) decide Defendants' Motion for Modified Payment Schedule (Dkt. No. 1026); (2) determine whether RCW 10.77.068 comports with the Permanent Injunction (see Dkt. No. 1012); and (3) enter any amended judgments that include fines related to competency services or fines related to Civil Conversion patients.

ECF 1038.

By minute order (ECF 1040), the Court supplemented its call for briefing to add the issue of "whether, notwithstanding the pending appeal, the Court and the Court Monitor have jurisdiction over the matters ordered in Paragraph 33(i) and 33(j) of the Breach and Contempt Order (Dkt. No. 1009 at 51)."

III. ANALYSIS

When a notice of appeal is filed, jurisdiction over the matters being appealed normally transfers from the district court to the appeals court. *Mayweathers v. Newland*, 258 F.3d 930, 935 (9th Cir. 2001). See also *Nat'l Resources Defense Council v. SW Marine Incorp.*, 242 F.3d 1163, 1166 (9th Cir. 2001), (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam); *McClatchy Newspapers v. Central Valley Typographical Union No. 46*, 686 F.2d 731, 734 (9th Cir. 1982))("As a general rule, '[o]nce a notice of appeal is filed, the district court is divested of jurisdiction over the matters being appealed.'")

However, the rule of jurisdiction transfer is limited to the aspects of the case that are being appealed. *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985). ("In general, filing of a notice of appeal confers jurisdiction on the court of appeals and divests the district court of control **over those aspects of the case involved in the appeal.**")(emphasis added).

This rule is judge-made; its purpose is to promote judicial economy and avoid the confusion that would ensue from having the same issues before two courts simultaneously.

1 *Southwest Marine*, 242 F.3d at 1166, (citing *Masalosaló v. Stonewall Ins. Co.*, 718 F.2d 955, 956
2 (9th Cir. 1983); 20 James Wm. Moore, Moore's Federal Practice, S 303.32[1] (3d ed. 2000)).

3 The principle of exclusive appellate jurisdiction is not, however, absolute. *Southwest*
4 *Marine*, 242 F.3d at 1166; *Masalosaló*, 718 F.2d at 956; 20 Moore's S 303.32[2][b]. The district
5 court retains jurisdiction during the pendency of an appeal to act to preserve the status quo.
6 *Southwest Marine*, 242 F.3d at 1166; *Newton v. Consolidated Gas Co.*, 258 U.S. 165, 177
7 (1922); *Hoffman v. Beer Drivers & Salesmen's Local Union No. 888*, 536 F.2d 1268, 1276 (9th
8 Cir. 1976); *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 79 (9th Cir. 1951).

9 This exception to the jurisdictional transfer principle has been codified in Rule 62(c) of
10 the Federal Rules of Civil Procedure, which allows a district court to “suspend, modify, restore,
11 or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise
12 as it considers proper for the security of the rights of the adverse party.” This Rule grants the
13 district court no broader power than it has always inherently possessed to preserve the status quo
14 during the pendency of an appeal; it “does not restore jurisdiction to the district court to
15 adjudicate anew the merits of the case.” *Southwest Marine*, 242 F.3d at 1166; *McClatchy*
16 *Newspapers*, 686 F.2d at 734; *Mayweathers*, 258 F.3d at 935. Thus, any action taken pursuant to
17 Rule 62(c) “may not materially alter the status of the case on appeal.” *Southwest Marine*, 242
18 F.3d at 1166, (citing Allan Ides, *The Authority of a Federal District Court to Proceed After a*
19 *Notice of Appeal Has Been Filed*, 143 F.R.D. 307, 322 (1992)).

20 Logically, this distinction between maintaining the status quo of the existing orders and
21 materially altering the case on appeal is necessary because were it not for the reservation of
22 jurisdiction to maintain the status quo of an order being appealed from, an appeal would have the
23 practical effect of automatically staying every injunction by depriving the trial court of authority
24 to implement or enforce the injunction. This would render Federal Rule of Appellate Procedure
8, setting procedures to request a stay pending appeal, a nullity. Indeed, Federal Rule of

Appellate Procedure 62(c) clarifies that absent a court order to the contrary, an injunction is “not stayed after being entered, even if an appeal is taken.” (emphasis added). *See also Robinson v. Delgado*, 02-cv-01538-NJV (N.D. Cal. October 4, 2012)(“... until its judgment is superseded on appellate review, this court retains jurisdiction to enforce the injunction it entered in this case.”) Here, the defense has neither sought nor been granted a stay.¹

In this case, the Court has jurisdiction to act in all of the areas contemplated. A decision on Defendants’ Motion for Modified Payment does not “materially alter the status of the case on appeal,” it merely sets the precise terms on which the existing order will be implemented. Similarly, the Court has discretion and jurisdiction to calculate fines related to competency services and civil conversion patients for the same reason; these rulings do not materially alter the status of the case on appeal. The same logic applies to the matters covered in paragraphs 33(i) and 33(j) of the Breach and Contempt Order – subsequent rulings on those matters will merely further the implementation of the status quo without materially altering the case on appeal. Finally, with respect to determining whether RCW 10.77.068 comports with the Permanent Injunction, this aspect of the case is not under appeal and is thus not covered by the general rule of jurisdictional transfer in the first instance. However, this issue would likewise fall under the category of maintaining the status quo, implementing the injunction without materially altering the case on appeal.

IV. CONCLUSION

For the foregoing reasons, the Parties stipulate that the pending appeal does not divest the Court of jurisdiction to act in any of the areas contemplated.

¹ “A party seeking a stay of a lower court’s order bears a difficult burden.” *United States v. Private Sanitation Indus. Ass’n of Nassau/Suffolk, Inc.*, 44 F.3d 1082, 1084 (2d Cir. 1994). District courts consider four factors in ruling on Rule 62(c) motions: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *United States v. 1020 Elect. Gambling Mach.*, 38 F. Supp. 2d 1219, 1220 (E.D. Wash. 1999).

Dated this August 28, 2023.

Respectfully submitted,

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